

REMARKS/ARGUMENTS

Claims 12-14 are pending in the application. Claims 13 and 14 have been cancelled. Claims 15 and 16 have been added. No new matter has been introduced. Reconsideration and allowance of claims 12 and 15-16 in view of the following remarks is respectfully requested.

The objection to the application under 35 U.S.C. § 120:

The Examiner has objected to the application under 35 U.S.C. § 120 for an improper claim of priority stating that the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with requirements of the first paragraph of 35 U.S.C. § 112.

In response, Applicant has amended the "Cross Reference to Related Applications" to recite that the application is a continuation-in-part of the parent applications. Applicant believes that such change should be sufficient to overcome the 35 U.S.C. § 120 rejection.

The rejection of claims 12 and 14 under 35 U.S.C. § 103:

The Examiner has rejected claims 12 and 14 under 35 U.S.C. § 103 over Lewis (Publication No. 2002/0032926) in combination with Espey et al. (U.S. Patent No. 5,350,266).

The Applicant respectfully traverses the rejection. To begin, the Applicant asserts that there is no suggestion or motivation to combine the cap of Espey with the overflow assembly of Lewis to establish a *prima facie* case of obviousness.

As set forth in the specification, the object of Applicant's invention is, in part, to facilitate the final

installation of the bathtub hardware (pg. 2, lines 26-27). As set forth in claim 12, this is accomplished by requiring a "nut having an outer periphery with a series of radially extending lugs which frictionally detachably engage an inner surface of the flange on a cap which fits over the nut". (See also pg. 6, lines 9-12 and pg. 8, lines 8-11). Thus, because of the lugs, the cap is installed on the lug of the nut by a frictional engagement, and is likewise detachable. This is advantageous as the cap may frictionally spin about the lugs independently of the nut such that if one grasped and turned the cap, the nut would not be loosened. Also, by being frictionally detachably engaged, the cap is easily positioned so that the notch is at a six o'clock position.

Lewis, while teaching a locking nut, does not teach a nut having a series of lugs on its outer periphery for receiving a cap. Rather, as shown in Figs. 4, 5, and 6, Lewis teaches the use of threaded opening 51 supported within elbow 40 by extruded protrusion 50 to provide for the installation of a test plug 8. [0028]. The threaded protrusion is also known in the art as the structure used to attach a cap to an assembly by use of a screw. For example, as described in the background of the invention, U.S. Patent No. 5,890,241 taught that the cap was held in place by screws that extended through the plate. Thus, Lewis provided no suggestion or motivation to provide lugs that frictionally detachably engaged the inner surface of the flange of the cap and rather teaches away from Applicant's claimed invention.

Espey, according to the Examiner, cures Lewis of this deficiency by providing a nut 20, with lugs 21-26, that receive a cap 40. The motivation to combine Espey with Lewis, according to the Examiner, was "in order to protect a user". Nowhere, however, in Applicant's disclosure, or in Lewis, is there any

discussion about protecting a user. Rather, as set forth previously, Applicant developed the nut with lugs to facilitate the final installation of bathtub hardware. As neither the Applicant, nor Lewis, sought to protect the user, there is no motivation to add the cap of Espey to Lewis and the rejection, as a matter of law, must be withdrawn.

Even if there were a motivation or suggestion to combine the cap and nut of Espey with the overflow assembly of Lewis, the proposed combination would not include each and every limitation as required in claim 12. As previously mentioned, claim 12 requires in part "a nut having an outer periphery with a series of lugs which frictionally detachably engage an inner surface of the flange on a cap which fits over the nut". In contrast, Espey teaches that "the cap is pressed downwardly over the nut in such a way that the projections 52 are received in the respective slot 32 of the side faces of the nut 20. As the cap is moved further, the ramps 53 of the projections 52 engage the bridge portions 34 so that further movement flexes the sidewalls 41-46 radially outwardly to permit the projections to move across the respective bridge. Once the projections have moved in an axial direction sufficient to clear the bridge, the walls flex inwardly to bring the inward end faces 54 of the projections in tight contact with the end wall 36 of the respective second slot 33". (Col. 3, lines 31-43).

Thus, there is no teaching that the lugs (21-26) frictionally detachably engage the inner surface of the flange of the cap. Rather, the cap is fitted to the nut by pressing downwardly such that the projections 52 snap into slots 33. Such an arrangement is not frictionally detachable and would require a tool of some sort to pry the projections out of slot 33. Also, the cap of Espey would not spin independently of the

nut once installed, and if the cap were turned, such as to position a notch the nut would be loosened.

Further, there is no teaching of frictional engagement between the lug and inner surface of the flange and instead only engagement between bridge 34 and the ramp 53 of projection 52. Therefore, the proposed combination would not have "a series of lugs that frictionally detachably engage an inner surface of the flange on a cap" and, the Applicant respectfully requests that the rejection be withdrawn. Likewise, claims 14-16, which depend from claim 12, are considered in proper form for allowance.

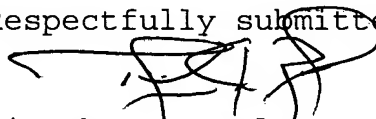
The Examiner has also rejected claim 12 under the judicially created doctrine of obviousness-type double patenting. To overcome this rejection, the Applicant has submitted a terminal disclaimer.

Conclusion:

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

A Petition and Fee for Extension of Time and a check for \$225.00 for two months extension of time is attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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